An Inquiry into the Constitutional Validity of Divers Acts of the Present Occupant of the Presidential Chair.

The Which is an Appeal to the People of the United States, Regardless of Party Affiliations, to Unite and Rescue the Constitution, that Sacred Heritage of Blood and Treasure, from the Usurping, Maladministrating Hand of the Occupant Aforesaid.

For Abundant Proof of Such Violations, Inquire Within.

T. A. SHERWOOD, L. L. D.

T. A. Sherwood.

Compliments of the Author

It may be that among your numerous acquaintances, publicity and a slight reward, might bring to light copies of these songs which certainly would possess a great historical value.

Very truly yours,

T. R. Sherwood.

on one side.

Digressing, let me remark, my grandfather, Adiel Sherwood of Fort Edward, N. Y. was an officer in the Revo. Army under Washington and with him that cold winter of 1778 at Valley Forge. His son, Rev. Dr. Adiel Sherwood, lies in Bellefontaine, St. Louis. My father, born 1791 frequently sang the songs of the old days. I did not apprehend the importance of preserving them. One of them, all I remember of it, he sang to a very martial air, the chorus of which was:

"We are marching up to old Quebec,
We are marching up to old Quebec,
With the vanguard of our army!"

The words of the other song, very spirited and evidently of later date, were these:

"The British yoke, the Gallic Chain
Were urged upon our necks in vain,
All haughty tyrants we disdain
And shout, long live America!"

@ 1/18/17 J.C.R.

518 Locust Ave.
Long Beach, Calif.
Jan. 10, 1917

Mr. J. C. Rowell
Librarian of the University of California
Berkeley, Calif.

Dear Sir:

Complying with your kind request for a copy of my pamphlet, I bethought me of something which Disraeli would class with his Curiosities of Literature. It consists of a contest which sprang up in the 17th century between a French professor and an English professor at Oxford, respecting the flexibility and copiousness of the languages spoken in the two countries, with the result of the contest.

As this is a paper recently received from an old scrap-book of mine in St. Louis, sent me by my daughter, Mrs. G. B. Webster, 5831 Cabanne Ave., St. Louis, it occurred to me that it, too, was worthy, considering its value and scarcity, of "permanent preservation". Should you print it for preservation, please return me one impression printed on one side.

Digressing, let me remark, my grandfather, Adiel Sherwood of Fort Edward, N. Y. was an officer in the Revo. Army under Washington and with him that cold winter of 1778 at Valley Forge. His son, Rev. Dr. Adiel Sherwood, lies in Bellefontaine, St. Louis. My father, born 1791

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At this important juncture of our national affairs, when the administration which took office, March 4th, 1913, has completed the second year of its allotted term, it is deemed not inopportune, to offer for consideration some questions which seem second to none in the fundamental importance which they bear to the welfare of our country.

These questions are: First: What are the powers and duties of the President of the United States under the Constitution?

Second: Has the present incumbent exceeded, fallen short of, or in any manner stepped aside from, such powers and duties, and if so, wherein?

Third: Other observations deemed pertinent to this investigation.

Fourth: The consequences which would normally arise from such derelictions from duty, or the usurpation of non-granted powers?

These powers and duties are thus catalogued in the instrument which creates and commands their obedience: Article 2, Sec. 1, requires this oath: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

Sec. 2 makes the President commander-in-chief of the army and navy of the United States, and of the militia, etc.

He may require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices, and has power to grant reprieves and pardons for offenses against the United States, etc.

With the advice and consent of the Senate, he also has power to make treaties, provided two-thirds of the Senators present concur, and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States not herein otherwise provided for, but the Congress may by law, vest the appointment of such inferior officers, as they think proper, etc. During the recess of the Senate, the President has power to fill up vacancies which occur during the interim, etc. Sec. 3 thus sums up his further powers and duties:

He is required, from time to time, to give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all officers of the United States.

Under Sec. 7, Art. 1, will be found what Chancellor Kent terms the "qualified negative of the President." To the language of the Constitution containing the carefully measured recitals of the executive powers specifically granted **in toto** to the President, is to be applied

the maxim, **expressio unius est exclusio alterius,** or the expression of one thing, is the exclusion of another; in short, affirmative specification excludes implication. This maxim is "an axiom of the law," 19 Cyc. 27, and cases cited.. Speaking of constitutions, Denio, C. J., applies the same rule to them as to other instruments. He says: "Every positive direction contains an implication against any thing contrary to it." People v. Draper, 15 N. Y. 532. Judge Cooley says: "If directions are given respecting the times and modes of proceeding in which a power should be exercised, there is at least a strong presumption that the people designed it should be exercised in that time and mode only, and we impute to the people a want of due appreciation of the purpose and proper province of such an instrument, when we infer that such directions were given to any other end." Const., Lines 114-15.

Marshall, C. J., said, in Gibbons v. Ogden, 9 Wheat. 1, 188: The **framers** of the constitution, and the **people** who adopted it, "must be understood to have employed **words in their natural sense and to have intended what they have said."**

Guided by the authorities quoted, it is readily determined that the language aforesaid, **set the bounds** and **fixed the limits** of the **presidential authority** as effectually as though **words of prohibition** were used.

In a recently written entertaining narrative, written by our former President, Colonel Roosevelt, and which may eventuate in an autobiography, he relates, that when President, he felt **free** to disregard **constitutional language containing no prohibitory words,** though this was, as he admits, contrary to the course pursued by President Taft, that eminent jurist, as well as by the predecessors of the writer.

This view, however, wholly overlooks the thought that negatives can as well be conveyed through the **media** of **affirmative specification used in commands,** as though such **behests** were **knotted all over with negatives;** indeed, such is the usual course, when constitutions are drafted. These observations find frequent illustration in the daily experience of common life.

Exempli gratia: Giving Jones money, you say, "Go on market, and buy me 50 **Black Horses."** No need for further words, nor those of **descriptive negation.** The **veriest yokel that ever kicked up dust with a splay foot on a country road** would bar every other color except the one affirmatively specified, so of the words of the Constitution in reference to the executive. Speaking of these words, Chancellor Kent observes: "The propriety and simplicity of these duties speak for themselves." 1 Kent, 289. Elsewhere, when speaking of **Congress being the supreme power in the state** consequent on the possession of the law-making power and "naturally having such a preponderance in the political system and acting with such mighty force on the public mind," he states this required "**that the line of separation between that and the other branches of the government to be marked very distinctly,** and **with the most careful precision,"** he goes on to say: "The Constitution of the United States has **effected this purpose with great felicity of execution, and in a way well calculated to preserve the equal balance of the government, and the harmony of its operations.** It has not only made the delegation of the **legislative power** to **one branch** of the government, of the **executive to another,** and of the **judicial** to the **third,** but it has **specifically defined** the **general powers** and **duties** of **each** of **these departments."** 1 Kent, 221.

On the same page, repeating the idea of segregation, it is stated: "By the Constitution **all the legislative powers** therein granted are vested in a **Congress, consisting of a Senate and House of Representatives.**" Art. 1, Sec. 1, Const. And still further on, as if to indelibly instill in the minds of his students the doctrine of the absolute segregation of the different branches of the government, the lecturer states: "By the Constitution, it is ordained, that the **executive power shall** be **invested** in **a President.**" Ib 271. Art. 2, Sec. 1. Similar views find expression as to the vesting of the exclusive judicial power. Ib 291. Art. 3, Sec. 1. Having thus laid the basis for the proposed investigation, in the authorities cited, with others yet to be called in aid, reliance will be based on the facts as furnished by the utterances of the daily press. And such inquiry will treat the Constitution of the United States as simply a **legal document** (Const. Lim. 88), as read, interpreted and construed by eminent jurists, and more especially where adjudication has occurred by that final arbiter on such matters, to-wit, the Supreme Court of the United States.

The first item to be considered is the mission of Mr. Bryan to Sacramento, on which he was projected by the President on his **intermeddling itinerancy.** The legislature of California were then engaged in completing the Anti-Alien Land Law, and this, in compliance with Sec. 4, Art. XIX, of the Constitution of 1879.

"The presence of foreigners ineligible to become citizens is declared to be dangerous to the well being of the state, and the legislature shall discourage their immigration by all the means within its power." Mr. Bryan had no call to visit California to instruct the legislature, and to dissuade them from performing their constitutional duty; all needful to do, was to lay before the **dread Baron Chinda**, the treaty of Feb. 1911, with Japan, side by side with the proposed law, and it would have at once appeared that such treaty, while it granted mercantile, manufacturing and commercial rights to each of the high contracting parties, industriously refused to grant any **agricultural rights whatever**, and therefore, a **law forbidding** what **that treaty** did **not grant** could **not possibly violate such treaty.** Besides, the rule of international law is that a treaty grants nothing except what is in terms **explicitly granted.**

The convention which framed the Constitution of the United States established a government of "enumerated powers, the national constitution being the instrument which specifies them, and in which authority should be found for the exercise of any power which the national government assumes to possess." Const. Lim. 11, 242, 266 and cas. cit. Conforming to this plainly expressed rule, whereabouts in that Constitution can the present incumbent look to find authority which he **"assumed to possess,"** when sending his premier on his unheard of mission, to dictate to a state, or persuade its legislature to disobey its constitutional duty? There is no such grant of power, consequently, when giving that order, he was guilty of a **sheer usurpation** of an **ungranted** power. Gov. Hiram Johnson had just as much authority to send **his Secretary of State** on to **Washington** to **instruct** or **dictate** to **Congress** concerning **their** duties.

The second point for review is furnished in the authority given the President to "nominate, and by and with the advice and consent of the Senate, appoint ambassadors, other public ministers and consuls." This language specifically confines the appointing power of the President to those sent on foreign missions, who were thus designated by and with the advice and consent of the Senate. **John Lind** was

neither **ambassador, public minister,** nor **consul,** nor were the Senate asked for its advice or consent regarding him. He was the mere creature and **"personal envoy,"** as he was called, of the **President.** Such an appointee the Constitution does not specifically authorize, and therefore forbids. Princip. Consti. Law, 28. This marks another departure from the Constitution by the present incumbent.

Passing to the third point for investigation, the Constitution as above quoted requires that the President "shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient." The Constitution having thus given specific directions as to the times and modes the executive power should be exercised towards the legislative branch, indubitably fixes and establishes such mode as a **formal communication only,** and **all other methods** of **communication were inevitably forbidden, as though expressly negatived;** and this has been the contemporaneous construction since the Constitution was adopted. Const. Lim. 102, 106.

Nowhere, than in this regulation, is the **wonderful prescience** of the **eminent men** who **framed the Constitution more signally displayed. Obedience** to it **cuts off all small talk, dickers** and **unseemly bargains between** the **two branches;** for instance: Candidate for re-election: **"If I vote for this repeal act, my people will beat me for renomination."** Response: **"Never mind that, we'll take care of you."** Plainly, a **proffered bribe,** which, if accepted and acted on, is one for which not a few legislators have **donned stripes** and **done time.**

The fourth point for consideration is this: Under the Constitution each branch is a co-ordinate branch of the government, independent of, and equal in power and dignity to any other. But under the new regime, as related by Samuel G. Blythe, a personal friend of the President, in the Saturday Evening Post, when speaking in terms of praise of the President (mark you), and of his attitude toward Congressmen, says: **"He's got them cowed; and they come and eat out of his hands!" Can an American read this story of fathomless degradation, without a blush?**

Under such manipulations the wall of separation between the executive and the legislature has been broken down, in direct violation of the organic law.

Bolder instances of similar sort are yet to be recounted; they constitute, **en masse,** the fifth point of view, which clusters around the validity of the present incumbent's actions; as to the meaning of the word **"recommend"**; as to his message of March 5th, 1914, and all therein professedly discussed, and what followed such message, and all related matters.

The message is the following:

"Washington, March 5.

"Gentlemen of Congress: I have come to you on an errand which can be very briefly performed, but I beg you will not measure its importance by the number of sentences in which I state it. No communication that I have addressed to Congress has carried with it a more grave or far-reaching implication to the interests of the country, and I come now to speak upon a matter with regard to which I am charged to a peculiar degree, by the Constitution itself, with personal responsibility. I come to ask the repeal of that provision of the Panama Canal Act of August 24, 1912, which exempts vessels engaged in coastwise trade of America from the payment of tolls, and

to urge on you the justice and wisdom and large policy of such a repeal with the utmost earnestness of which I am capable. In my own judgment, maturely formed, after careful consideration, I believe that exemption constitutes a mistaken economic policy from every point of view, and is moreover in plain contravention of the treaty with Great Britain concerning the canal, concluded November 18, 1901. But I have not come before you to urge my personal views. I come to state a fact and a situation. Whatever may be our own differences of opinion concerning the much debated measure, its meaning is not debated outside of the United States.. Everywhere the language of the treaty is given but one interpretation, and that interpretation precludes the exemption I am asking you to repeal. We consented to the treaty; its language we accepted, if we did not originate it, and we are too big, too powerful and too self-respecting a nation to interpret with too strained or refined reading the words of our own promises just because we have power enough to give us leave to read them as we please. The large thing to do, is the only thing to do, is the only thing we can afford to do, and that is a voluntary withdrawal from a position everywhere questioned and misunderstood. We ought to reverse our action without raising the question of whether we are right or wrong, and so once more deserve our reputation for generosity and redemption of every obligation without quibble or hesitation. I ask this of you in support of the foreign policy of my administration. I shall not know how to deal with other matters of even greater delicacy and nearer consequence if you do grant it to me in an ungrudging measure."

The explanatory editorial comment on the message, in the Long Beach Press, is this: "The last sentence of the address was considered significant. It was taken as a veiled reference to the President's acknowledged desire to accede to England's wishes, relative to canal tolls, as a means of insuring British support for the administration's course in Mexico."

How is the president to "recommend" a measure to the legislature? Obviously, in a bold, straightforward, manly way, without cryptic meaning, delphic utterances, or the gamester's trick of slipping a card up his sleeve. According to lexicographers, the word "recommend" conveys the meaning "to put in a favorable light before any one; "request, to ask for;" "entreat, to ask earnestly for;" "beg," the same; "persuade, to influence, or gain over, by argument, advice, entreaty, expostulation." Depend upon it, our forbears although of the "grandfather" class, understood their own vernacular, when drafting the constitution, and measuring their words, they wrote down, not request, not entreat, not beg, nor persuade, but simply "recommend." There must be no urging, advocacy or persuasion and this the obvious and all-sufficient reason:

That should the measure recommended be formulated into a law, the executive should be in a state entirely impartial, to approve or disapprove the offered bill; in which state he could not possibly be, were he in advance its pronounced advocate. Again, the words are: "recommend to their consideration such measures." etc. They are recommended to their consideration; not to their adoption. What an exquisite sense of the precise meaning of words, those old framers had! When the formal message, the only one given recognition by the constitution, reaches congress, the measure borne thereby, passes within their exclusive consideration; a consideration not to be shared,

halved, quartered, nor in any other manner subdivided, with any other living creature. To a congress brooding over a measure submitted, no **secret instructions** or **messages can go; no more than could be sent by a judge, in like case, to a brooding jury.**

Expressio unis, etc.

You will observe, also, that while the constitution grants the executive authority to recommend measures to the consideration of congress, it grants none whatever to oppose **pending legislation.** The only opposition on his part can occur by veto. So carefully did our forefathers **hedge about the executive** and **keep him on his own reservation!** Was the course prescribed by the constitution pursued when recommending congress to repeal the Tolls Exemption Act? In the first place, the present incumbent did not **"recommend"** the **repealing act at all**; he **strenuously** and with **great urgency advocated its passage**; something which, as already seen, the constitution plainly did not permit him to do. In the second place, to solve this question, an analysis of the message and what followed it, is requisite. The Tolls Exemption Act, the message condemns, as a mistaken economic policy. **How, or in what way, a policy** which **declines to tax our own vessels, engaged in the coastwise trade,** while passing through the canal, in **territory of our own,** bought by us at **great cost,** and **built by us under our own supervision,** at a **cost** of **hundreds** of **millions,** could be a **mistaken one, economically,** would if **true,** be **easy** of **explanation**; if **false, difficult**; and on this point **silence** was **easiest,** and **silence** was **observed.**

But the charge is made that the Tolls Act is in plain contravention of the treaty with Great Britian, concerning the canal, concluded Nov. 18, 1901. All this matter had been thoroughly thrashed out, in 1912, when the Tolls Act passed with the approval of President Taft. Not only that, but the Supreme Court of the United States, through Mr. Justice White, ruled in Oelson vs. Smith, 195 U. S. 332, that a British ship, engaged in trade to foreign ports, was not discriminated against, when tolls were imposed on it, from which American coastwise vessels were freed, both by federal and state legislation and that such legislation did not, and could not, impinge on the treaty made three years before. And this ruling binds every other branch of government, being made respecting the meaning, force and effect of the words of a treaty, which is part and parcel of the supreme law of the land. Const. Lim. 24,77. And this ruling was stated, during debate on the bill. Besides, as aforesaid, when a nation executes a treaty, nothing passes thereby, to the other contracting party, except **explicitly granted.** This is a fundamental rule of international law as shown by Richard Olney, Attorney General under Cleveland, in an article on the Hay-Pauncefote treaty, and the Panama Canal. Vol Am. Soc. Internat. Law. As in that **treaty,** no **express** concession was made to **England,** requiring our coastwise vessels to pay tolls, they were exempt therefrom, by the mere force of the **treaty, itself,** so far as concerns **England,** without a statute of exemptions.

But it is said that foreign powers take a different view of that **treaty** to that expressed in the Tolls Exemption Act. What of it? **Are we sunk so low in servitude** as to obey **foreign opinion** or **dictation** as to **our own treaty's meaning?** But it is further said, "We **ought to reverse our action** without raising the question of whether **we are right** or **wrong,** and so once more deserve our reputation for

generosity and redemption of every obligation, without quibble or hesitation."

Vermiculate logic characterizes this language. Obfuscation obviously reigned in the mental camera of the distinguished dialectician as he finished that sentence. There is **nothing in common between** an **act** of **generosity** and one **paying** a **debt**; and yet these diverse acts are there **jumbled together**, in **"confusion were confounded."** In short **England** must get the **Tolls Act repealed**; whether as a **gift**, or whether as a **debt**. England, in this instance, evidently plays the boy's game with the United States: **" Heads, I win, Tails, you lose!"**

If the editorial comment, evidently close and friendly, be taken at its face value, then a **secret deal** was plainly on between the present incumbent and the **British Embassy**, the former in sore straits for that fit emblem of **constituent weakness**, its **foreign policy**, the latter, quite willing to accept for assisting a **poor weak dependent nation**, such as ours is now, and as a quid pro quo, the repeal of the Tolls Act, which repeal would further cripple our merchant marine. If such treaty were made, then doubtless made **without the advice and consent** of **the senate.** And indubitably, also, from that "veiled reference" to "matters of even greater delicacy and nearer consequence," **more** was revealed to **England** than to **our own congress.** Did that message **"recommend"** what it so **carefully concealed?** Be that as it may, in order to carry out the foreign policy aforesaid, favorable action of congress was necessary. How was this to be obtained? **Listen:** For many years prior to the advent of the present House, tyrannous speakers and overbearing majorities had forged such arbitrary rules and rulings thereon, that **free** and **unfettered debate** was not **infrequently choked off.** To remedy this evil, with the aid of Champ Clark, Oscar Underwood and other leaders, the whole system was remodeled, and the **cloture rule abolished** and republicans, alike with democrats, were abundantly pleased with the new rules, and their impartial administration.

Well, the message was delivered; and although the present incumbent had stated: "No communication that I have made to congress, has carried with it a more grave or far-reaching implication to the interests of the country, and I come now to speak upon a matter with regard to which I am charged to a peculiar degree by the constitution itself, with personal responsibility"; yet, **hot upon** the **heels** of **the message,** goes an **order** from the **White House** to congress, to **re-establish the cloture rule,** and to grant **but 15 hours for debate on the matter so recently proclaimed** by the **executive,** as so important! So said, so done; and the order from the White House, prevailed over a most gallant resistance offered by the ablest members of both political parties, on the floor of the House; thus constituting **a direct invasion** of **the legislative branch, by that of the executive, in the very teeth of the constitution!**

The president had as much right to appear on the floor of the House; speak and vote there, as to order abolition of its rules, or dole time for the discussion of such momentous measures. And yet no democratic paper cheeped out even a feeble protest at the flagrant outrage!

In sharp antithesis to this course, take notice of this incident: In 1866, the legislature sitting in New Orleans, was invaded under

orders from Gen. Grant and two members of that body dragged from the floor by a file of soldiers.

When the news flashed over the wires, the greatest excitement and indignation prevailed; meetings assembled in all large cities, participated in by men of all shades of political opinion, were addressed by Fitz Greene Halleck and other republicans, and the tone, temper and indignation there manifested were such **that the outrage was never again attempted.**

What difference is there in point of principle, between exertion of **brute force** on a **legislative body,** and **over-awing** them by **executive power,** or **seducing** them by the **hope** of **executive patronage with 75 per cent** of **such** patronage **still retained** in the **executive's hands.**

Other points present themselves for investigation; they will be considered under one head.. When the Underwood tariff act was enacted, he being the devoted adherent of the American Merchant marine, caused a clause to be inserted therein, granting a preferential duty of 5 per cent upon imports in American bottoms. This clause had been amply vindicated ever since Jefferson's day, and had built up our merchant marine from small beginnings until its sails whitened every sea, breeding a hardy race of sailors, that many a time and oft had compelled the haughty Briton to strike his colors in humiliating defeat! But this clause, duly made part of the tariff act, a **peremptory order** of the **executive** on the **Secretary** of the **Treasury,** forbade to be enforced.

Aga'n the maximum price of $1.25 per ton, was the cost of tolls through the Panama Canal under the law of congress. But what of that? The president declared $1.20 a ton as the fixed charge. He, also, then arrogated to himself authority to charge tonnage on the **deck load,** so that, as shown by protests of a certain vessel, to the Secretary of War, the tolls which would have amounted on that ship under the law of congress to $5,603.75, were increased under the Presidential tolls on the deck load plan, to $1429.45 more than the law of congress permitted; totalling $7,033.20.

Both of the presidential changes aforesaid hurt the merchant marine, and corresponding helped the railroads, and both alike, are without the sanction of constitutional authority. "Only the legislature can suspend the operation of a general law, and then the suspension must be general." Const. Lim. 558.

Chancellor Kent says: "But when laws are duly made and promulgated, they only remain to be executed. No discretion is submitted to the executive officer. It is not for him to deliberate and decide upon the wisdom or expediency of the law." I Kent 271.

Furthermore, an Anti-trust act was recently enacted. While on its passage, Senator Reid gave notice on the floor of the Senate Chamber, that it bore no sanction clause; no provision for inflicting punishment; was a **"toothless tabby cat,"** yet nevertheless, the present incumbent gave the defective bill his approval. Was that approval given through ignorance of Senator Reid's statement, or of a very common point in law?

No matter what the cause, it certainly afforded opportunity for saying to the people: **"See how I curbed those predatory Trusts for your sake!"**

And to the Trusts: **"See how I outwitted the clamor of the mob, for yours!"**

Did the present incumbent signing that obviously worthless Anti-Trust Act, knowing it impossible of enforcement; when doing so, **"faithfully execute the office of president of the United States"** and **"take care that the laws are faithfully executed?"** Some years ago, the pathway was laid out to the precedent derelictions of the present incumbent, before he mobilized them on the floor of congress, as appears by a work which assumes the form of lectures, delivered before the students of Columbia University, entitled (sic) **"Constitutional Government in the United States."** A few outlining excerpts will serve to show the character of the production and how far it **departs from the facts** and **the law** in its **general make-up.** And first, it is put forth as a fact, that in the state governments there is the same **partial** separation of legislature and executive that is characteristic of the federal government. And the reason given therefor, is **"because the constitutions of the states were formulated at the same time** the **government** of the **United States was formulated."** Const. Govt. 41.

Upon occurrence of the revolution, it swept away all colonial charters, save those of Connecticut and Rhode Island. Thereupon, the people framed new constitutions for themselves. 8 of the original states did this, in '76, 2 in '77, and 1 in '80. Const. Lim. 55, and note P. 10, Princps. Const. Law.

The lecturer makes further assertion, **"There was never any sovereign government in America;** the **governments** of the **colonies operated under charters."** Const. Govt. 146. Cooley says: "The states were thus repositories of **sovereign power,** and **wielded them** as **being theirs by inherent right,"** Princps. Const. Law, 28. Note the difference!

As previously shown by quotations, the framers of the constitution of the United States, made a most industrious and absolute separation of the different departments of government. This though termed a **partial** seperation by the lecturer, on p. 41, Const. Govt., after building an argument on this theory; near the close of the volume, says of those framers: "They succeeded in actually separating legislature and executive." Ib. 201. Why **these divergent statements** of the **same instrument?**

Such absolute separation intimately associates itself with the doctrine of "Checks and balances," which our **lecturer holds in such derision.** Const. Govt. 56. Nevertheless, Judge Cooley speaks approvingly of it: "The American system of government is an elaborate system of checks and balances," citing Vol. 6, 467 John Adams Works, Princps. Const. Law, 148 Ib. 41. Like pronounced praises have been reverentially spoken of the system, by preeminent jurists of the past, and those of the present day. 1 Kent, supra; Const. Lim. 64, 65, 71, 126; Story Const. S. 424; Black on Const.

Our lecturer complains of the framers of the constitution that they gave "the executive the veto, as his only check on congress; a power of **restraint,** not of **guidance;** empowered him to prevent bad laws, but gave him no **opportunity to make good ones."** Const. Govt. 59, 60.

And on this point he further says: "Some of our presidents have held themselves off from using the full legitimate power they might have used, because of conscientious scruples; they held the strict literary theory, the Whig theory of the constitution and acted as if they thought that there should be no intimate communication

of any kind between the Capitol and the White House; that the president was no more at liberty to lead the houses of congress by persuasion than he was to dominate them by authority." Ib. 70.

Those presidents in thus obeying their conscientious scruples, simply obeyed their oaths of office; they took the words of the constitution in their natural and ordinary meaning, just as Chief Justice Marshall declared should be done; he said: The framers of the constitution and the people who adopted it "must be understood to have employed words in their natural sense and to have intended what they have said." Gibbons vs. Ogden, 9 Wheat, 1, 188.

Our lecturer admits that when the constitution was formulated, **"Checks and balances were then the orthodox gospel of government."** "The most serious success of the convention in applying Whig theory to the government they were constructing was the **complete separation** of **congress** and **the executive which they effected."** Const. Govt. 201. This being the status of the organic law when its adoption occurred, Judge Cooley thereupon says: "The meaning of the constitution is fixed when it is adopted, and it is not different at any subsequent time when a court has occasion to pass on it." Const. Lim. 89, citing People vs. Blodgett, 13 Mich. 127; Scott vs. Sanford, 19 How. 393. Notwithstanding these authorities so conclusive in their character respecting the permanency of the constitution, our lecturer, still harping on the theory of the partial separation of the executive and the legislature, insists that though the president is denied access to the floor of congress and direct influence on its deliberations, yet this results, he says, "from **custom,** not from law." Const. Govt. 73. By the same token, **custom,** not law, denies access to the **judicial** department, and participation in **its deliberations!**

Further on, he comes out, and again admitting that the framers of the constitution "succeeded in actually separating legislature and executive;" but thereupon denies **"they meant actually** to **exclude** the **President** and his **advisers** from **all intimate personal consultation with the houses in session."** Const. Govt. 201. In other words, that the framers did not mean what they said, but intended to combine **"complete separation" close along side of intimate personal consultation!**

Quoting further from our lecturer, he says: "The Constitution cannot be regarded as a **legal document** to be **read as a will or contract would be.** It must of the necessity of the case, be a **vehicle of life.** As the **life** of **the nation changes, so must the interpretation of the document which contains it change, by a nice adjustment, determined, not by the original intention of those who drew the paper,** but by the **exigencies and the new aspects of life itself.** Const. Govt. 192. Could **language** .be more **intangibly** and **unspeakably vague than this?** By what skillful diagnosis shall the interpreter of the document determine by a **nice adjustment,** just when the precise **"psychological moment" arrives,** for the **momentous exuviation to occur;** a **change,** mark you, brought about **"by the exigencies** and **the new aspects of life itself?"** Who shall the nice adjuster be, and by whom appointed, who overturns the old constitution, with all of its vested rights, in the twinkling of an eye, and by a single stroke of his pen? You will observe that under this new invention of questionable shape, "If shape it might be called that shape has none," no provision is made for amending the constitution as the framers devised should be done; Art. V of the Constitution is dis-

tinctly and utterly repudiated. By what authority is this done? By the mighty authority of our lecturer! Very different views are held on this subject by Judge Cooley, who treats the Constitution like any other written instrument; an instrument of permanency; he says: "A cardinal rule in dealing with written instruments is that they are to receive an unvarying interpretation and that their practical construction is to be uniform. A constitution is not to be made to mean one thing at one time, and another at some subsequent time when the circumstances may have so changed as perhaps to make a different rule in the case seem desirable. A principal share of the benefit expected from written constitutions would be lost if the rules they established were so flexible as to bend to circumstances or be modified by public opinion. It is with special reference to the varying moods of public opinion, and with a view to putting the fundamentals of government beyond their control, that these instruments are framed ..... but a court or legislature which should allow a change in public sentiment to influence it in giving to a written constitution a construction not warranted by the intention of its founders, would be justly chargeable with reckless disregard of official oath and public duty; and if its course could become a precedent, these instruments would be of little avail ..... What a court is to do, therefore, is **to declare the law as written,** leaving it to the people themselves, to make such changes as new circumstances may require." Const. Lim. 88-89.

Other quotations from our lecturer's thesis are these: "There can be no constitutional government where the organs of government (i. e. the men who conduct it) are not constantly under the control of public opinion." Const. Govt. 83.

"He (the President) is the one person who can form public opinion by his own direct influence, and act upon the whole country at once." Ib. 127.

"The President is undoubtedly the only spokesman of the whole people ..... The constitution bids him speak, and times of stress and change must more and more thrust upon him the attitude of originator of policies." Ib. 73. "The President is at liberty, both at law and in conscience, to be as big a man as he can. His capacity will set the limit; and if **Congress be overborne by him,** it will be no fault of the makers of the Constitution; it will be from no lack of constitutional powers on its part, but only because the President has the nation behind him, and Congress has not. He has no means of compelling Congress, except through public opinion." Ib. 70-71.

Otherwise stated, it makes no difference what barriers the Constitution has raised to prevent the President from **"overbearing"** Congress, and **grasping in his own hands the legislative power; he can gain his end; batter down the bulwarks of the Constitution,** and **reign triumphant over a conquered** Congress, if he have the nation at his back and public opinion in his favor!

Further quotation from the book is needless. Though professedly written on a subject of the highest importance, **"Constitutional Government,"** yet not an authority is cited, nor, indeed, could there be, as its whole warp, woof and fiber is utterly at war with all heretofore written or ruled on the subject in hand. True, our lecturer mentions the name of Chief Justice Marshall, but quotes him not; to do so, would be to be:

"Hoist with his own petar!"

In the august presence of that Great Chief Justice, dogmatic assertion might well hold its peace, and arrogant assumption forever stand abashed!

But the book coincides alike in theory and practice with the acts of the present incumbent heretofore related. He has grasped in his hands the legislative power of the government; indulges in daily **"intimate personal consultation"** with the houses in session, right in the face of the Constitution!

The same thought finds expression elsewhere. On Feb. 9th, on the floor of the Senate Chamber, this statement was made: "The proceedings of this Senate in the last week have been a burlesque on constitutional government," said Senator O'Gorman. "The command came from without the walls of the Capitol to pass this ship purchase bill before the appropriation bills ..... Concluding, Senator O'Gorman declared there would be as much warrant for the president sending for the chief justice of the United States to come to the White House to discuss a pending case, as to send for a **senator to take his orders."**

At the outset of this investigation, it was promised that the normal consequences of the derelictions aforesaid, would be stated. In order, however, for any such result to follow, there must, of course, be a **legislative body to prefer charges.**

But, as recently remarked by a Republican Senator, **"the President has abolished Congress!"**

That superservile body of men only sit now to register the decrees of their master the President! The question used to be asked: What is **Congress** going to do?

Now it is, what is **Wilson** going to do?

The premises considered, an aged man, a life-long Democrat, standing on

"The very verge of the churchyard's mold," who loves his country, well, in this her hour of precipitant peril, raises his voice in warning to his countrymen, that her constitution is being assailed in the innermost seats of its foundations, by one who has sworn to preserve, protect and defend it to the best of his ability. The most solemn oath an American could take; an oath preservative, it is true, of a mere legal document, but one which contains all we hold most dear; all that the "wandering Lotophagi forgot; home and country and friends." A mere legal document, it is true, but one for whose sake, and under whose shadow, on many a bloody field, great heroes have died.

"The blood of martyrs is the seed of the church;" the blood of patriots is the seed of liberty. May that patriot blood appeal to us one and all, to rescue that sacred document from further aggressions, come from what quarter they will!

When Caesar sprang from the deck of his sinking ship into the tempestuous waves of the Adriatic Sea, with one hand he smote the fierce waves, as he swam towards the shore, and with the other, he held his precious "Commentaries on the Gallic War," high above the surging billows around him; so may each one of us, whenever occasion demands, raise the Constitution of our country, high above the boding waves of overvaulting and unscrupulous ambition; and as the last act of our lives, if need be, hold it up! Hold it up!

Long Beach, California, March, 1915.

BILL OF PARTICULARS FROM WHAT NEWSPAPERS AND OTHER SOURCES CHARGES IN ARTICLE DERIVED

The people of any township in the State, may peaceably assemble and petition Congress for redress of any abuses or usurpations of power done by any federal officer even of the highest grade; prefer charges, and Congress is bound to attend to such charges and take suitable action thereon. Cooley Const. Lim. 7th Ed., 497, 498 and note 3.

The right to petition Congress is one of the attributes of national Citizenship, and as such is under the protection of the national authority. U. S. v. Cruikshank, 92 U. S. 542.

Speaking of the rights of the Publishers of News, Cooley says:

"It is one thing to produce in the newspapers injurious reports respecting individuals, however willing the public may be to hear them, and a very different thing to discuss the public conduct of high officials. If they may not publish news with impunity, they may at least discuss with freedom and boldness all matters of public concern, because this is the privilege of every one. The privilege extends to matters of government in all its grades and all its branches, et cetera. The law invites such discussion, because of the public interest in it, and extends its protection to all publications which do not appear on their face, and not shown otherwise to have been inspired by malice. Because the discussion is the common right and liberty of every citizen." Const. Lim. 7th Ed., 645-6, note 3.

"Constitutional Government in the United States," commented on within, consists of Lectures delivered before the students of Columbia University by Woodrow Wilson, President of Princeton University, displays either an utter ignorance of all constitutional principles, or else a predetermination to pervert such principles to some ulterior and sinister purpose; there is no halfway house between these alternate conclusions.

The part most singular taken in this matter, however, is that of the University of Columbia, that erstwhile with reverence listened to the revered lips of Kent, Story and others discoursing on constitutional questions, yet, in the year of grace 1907, stood **Godfather of,** and gave the **seal** and **sign manual** of its **approval** to the **wretched drivel** those lectures contain.

Is this another deplorable instance of the Dwarfing Colleges' Pale Abortions?